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No.

In the

Supreme Court of the United States

ABDUL AZIZ,

Petitioner,

v.

RODNEY E. SLATER

Respondent.

On the petition for a writ of certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

ABDUL AZIZ, Ph. D.
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36 pp

QUESTIONS PRESENTED

1. Whether "qualifications" as used in the Title VII of Civil Right Act of 1964, and in the ADEA of 1967, as amended, are a genuine issue.

2. Whether the defendant has violated the ADEA of 1967, as amended.

3. Whether, for hiring discriminations, a further amendment will strengthen the ADEA of 19967, as amended. The amendment should read as follows:

"Qualification in hiring discrimination is a genuine issue and as such hiring discrimination complaints must not be dismissed by summary judgments, or qualifications must be precluded". Both mean the same.

4. Whether courts lack necessary qualifications to evaluate the qualifications of the candidates. If it is so found then the following amendment should be adopted.

"In those employment hiring discrimination complaints where courts lack necessary qualifications to evaluate the qualifications of the candidates, the complaints shall not be demised by summary judgments. They must be submitted to a jury trial". Both mean same.

5. Whether, for hiring discriminations, another further amendment is feasible or needed to the existing 1993 Supreme Court Opinion shown below:

There are two **methods** by which a plaintiff can

attempt to prove potential discrimination. First, plaintiff may present **direct evidence** of employment discrimination. Second, the plaintiff can rely on the three stage order of proof and presumptions and satisfy his burden of proof using circumstantial evidence. *St. Mary's Honor Ctr. v. Hicks* 509 US 502, 506-12, 113 S. Ct. 2742

6. Whether the district court has applied the applicable law to adjudicate the case.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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TABLE OF AUTHORITIES

Coordinates of authorities are given below in parenthesis. First digits are page numbers, second digits are line numbers. For example, (3 14) is page 3, line 14.

Authorities are cited in bold faces:

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1. Title VII Civil Rights Act of 1964, as amended.
(i 1), (1 24), (4 7), (5 9), (5 11), (5 12), (6 14), (13 15),

2. ADEA of 1967, as amended:
(i 2), (i 4), (i 7), (1 24), (2 5), (2 10), (4 10), (5 22), (5 24), (6 7), (8 10), (10 12), (13 15),

3. Rule 56(c): (4, 8), (4 19), (4 20), (5 16), (5 17), (7 1), (10 4), (10 10), (10 11), (12 13), (13 20), (14 10), (14 10), (14 23), (14 24), (19 5),

4. Supreme Court Opinion, Conley v.Gibson 355 US41 (1957): (7 8).

5. Supreme Court Opinion on St. Mary's Hon. Ctr. v. Hicks 509 US 502, 506-512, 113 S. Ct. 2742 (1973): (ii 3), (7 10)

6. Anderson, 477 US at 248: (11 22).

7. Inland Oil & Transport Vo. v. United States: 600 F. 2d 725 (8th Circle. 17 9): (12 7).

8. Id at 255: (12 15)

v

9. Schrob v. Catterson: 948 F. 2d 1405 (3rd Cir. 1991) 13 17)

10. Markowitch v. Northwest Land Co.: 906 , F, 2d 100, (3rd Cir. 1991) (13 18).

10. Counts v. M. K. Ferguson Co.: 862 F. 2d 1338 (14 3)

11. Ransom v. Marrazzo,: 848 F. 2d 398, 401 (3rd Cir. 1988. (15 10).

12. St. Mary's Honor Ctr v. Hicks 509 U.S. 502, 506-12, 113 S. Ct. 2742 (ii 6), (8 6)

13. Holloway v. Lockhart, 813 F.2d 874 (8th Cir, 1987) (11 13)

14. Supreme Court opinion on FRCP 56(c): (14 24)

In The
SUPREME COURT OF THE UNITED STATES

Abdul Aziz, *Petitioner,*
v.
Rodney E. Slater, *Respondent.*

I. PETITION FOR WRIT OF CERTIORARI

Petitioner, Abdul Aziz, petitions this court to grant a writ of certiorari to review the judgment of the United States Court of Appeals & of the District Court.

II. OPINIONS BELOW:

None published. Appeals Court decision, affirming district court order, is in exh._1_, page 1a.

III. JURISDICTION:

1. The final judgment to be reviewed, the appeals court decision, exh._1_, was entered on 2-2-2000.

2. Jurisdiction is conferred upon the Supreme Court by Rule 10 (c), which says "a United States Court of Appeals has decided an important question of federal law that has not been, but should be settled by this court," **and** "has decided an important federal question in a way that conflicts with relevant decision of this court."

3. And jurisdiction is conferred upon the Supreme Court by federal law, ADEA of 1967, as amended, that has not been decided, but should be settled by this court.

ADEA of 1967, as amended, says:

It shall be unlawful for an employer to refuse or fail to hire an individual, despite his/her **qualifications,** or otherwise to discriminate an individual because the individual belongs to the protected group by virtue of his/her age.

IV. ABSTRACT

The law, ADEA of 1967, as amended says: **"if a plaintiff belongs to the protected group and is better qualified, employer shall not refuse or fail to hire the plaintiff.** I belong to a protected group and I was better qualified. Yet, the employer failed to hire me. Therefore, I was unlawfully discriminated in violation of ADEA of 1967, as amended.

V. STATEMENT OF THE CASE

In response to an advertisement for a faculty position by the respondent, the petitioner applied. But he was not hired. Petitioner filed a suit in the federal district court pursuant to ADEA of 1967, as amended, and presented the advertisement of the position, the resumes of the plaintiff and of the selectee. The district court dismissed the case by summary judgment and the appellate court affirmed the case by summary judgment.

VI. STATEMENT OF THE ISSUES

1. The district court could not have dismissed my complaint if the employer had not committed

(i) Breach of contract
(ii) Obstruction of justice
(iii) Concealment of truth
(iv) Perjury and
iv) fraud.

So, I filed a motion for relief of judgment or order pursuant to Rule 60(b)(6). Breach of contract, obstruction of justice, concealment of truth, perjury and fraud are the "other reasons" referred to in Rule 60(b)(6).

My motion was dismissed by the district court order dated 5-20-99, exh._2_ and affirmed by the appellate court exh._1_ dated 12-29-99.

VII. PROOF OF THE ISSUES

A. Breach of contract and fraud

1. The employer advertised one set of qualifications, exh._3_, and used another set of qualifications, exh.__4__. **This is a serious breach of contract.** This is **also fraud.**

2. In the second set of qualifications, exh.__4__, the employer had 6 advertised qualifications and 8 qualifications not advertised. **This is a breach of contract and fraud.**

B. Obstruction of Justice and concealment of truth.

1. Employer produced a completed spreadsheet of plaintiff, exh._5_, *but not a completed spreadsheet of selectee, exh._6* Exh._6_ is not a completed spreadsheet, because the employer has filled each box of the last four columns in the plaintiff's spreadsheet, exh._5_, but has not done so in the selectee's spreadsheet, exh._6_. This is obstruction of justice and concealment of truth. Employer has circled appropriate numbers in the plaintiff's spreadsheet, but has not done so in the selectee's spreadsheet,[2] This is concealment of truth and fraud.

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[2] I do not know how much of this explanation and the exhs. 3, 4, 5 & 6 will be understood by the Honorable Supreme Court.

C. Concealment of truth:

1. In exh._4_, the employer left 14th qualification criteria (box) empty in the qualification box at the intersection of first column and the 14th row, the row saying,"Other info." This is also very much concealment of truth. The employer did not provide any info for that box.

My charge: Had the employer not committed the above unlawful actions, it could not refuse to hire me.

VIII. ARGUMENTS IN FAVOR OF THE QUESTIONS PRESENTED

1. Whether "qualification" as used in the Title VII of Civil Right Act of 1964, and the ADEA of 1967, as amended, is a genuine issue.

The two laws above say:

It shall be unlawful for an employer to refuse or fail to hire an individual, despite his/her "**qualifications**", or otherwise to discriminate an individual because the individual belongs to the protected group by virtue of his/her age.

In the above laws "qualifications" are an issue. Since "qualifications" are an issue by law, it is a genuine issue. Also this issue, **as a genuine issue,** is in conformity with the genuine issues referred to in Rule 56(c) and in Supreme Court's opinion on Rule 56(c).

Rule 56(c) says:

The judgment shall be rendered forthwith, if the pleadings,

depositions, and answers to interrogatories, and the admissions on files, together with affidavits, if any, show that there is no **genuine issue** as to any material fact as a matter of law, and that the party is entitled to a judgment as a matter of law.

Therefore, qualifications are "a genuine issue".

And the Supreme Court Opinion on Rule 56(c) says:

> The plain language of Rule 56(c) mandates the entry of summary judgement, after adequate time for discovery and upon motion, against a party who ails to make sufficient showing to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. In such a situation, there can be '**no genuine issue** as to any material fact'.

So, qualification is a genuine issue.[3]

This opinion does not only say that qualification is a genuine issue but also says that if there is a genuine issue, there can be no summary judgment.

With due respect to the district court, I like to say that the district court did never use the above Supreme Court Opinion, which is the ultimate standard of summary judgment. Perhaps the courts do not comprehend the above Supreme Court Opinion.

So, summary judgment was not appropriate.

2. Whether the defendant has violated ADEA of 1967, as amended.

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[3] With due respect, if the district court judges were smart, they would not need any other rulings to decide the ADEA complaints.

ADEA of 1967, as amended, says: "It shall be unlawful for an employer to refuse or fail to hire an individual, despite his/her qualifications, otherwise to discriminate an individual because the individual belongs to a protected group."

In the comparison of qualifications, exh._7_, it has been indisputably shown that I was better qualified. And my resume exh._8_shows that I belong to a protected group.**Therefore,** according to the above law, the employer has discriminated against me in violation of ADEA of 1967, as amended.

The defendant did not contest that I was better qualified and that I belonged to the protected group by virtue of my age. Therefore, I cannot legitimate how the lower courts did not find that I was discriminated against. I hope that for the good of America the Supreme Court will consider this question. This question is not only raised in this complaint, but also in all other complaints. The question that a plaintiff was better qualified and belonged to the protected group is this question, and the action has become a pattern.The Honorable Supreme Court must stop this pattern, otherwise racial discriminations will never be eliminated from America.

Rule 56(c) is a guidance for summary judgments to plaintiffs, defendants, attorneys and courts. Rule 56)c) says:

> The judgment shall be rendered forthwith, if the pleadings, depositions, and answers to interrogatories, and the admissions on files, together with affidavits, if any, show that there is no genuine issue as to any material fact as a matter of law, and that the party is entitled to a judgment as a matter of law.

This rule from the Federal Rules of Civil Procedure has

been supported and further clarified by the Supreme Curt which says:

> The plain language of Rule 56(c) mandates the entry of summary judgement, after adequate time for discovery and upon motion, against a party who fails to make sufficient showing to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to any material fact'.

3. Whether, for hiring discriminations, a further amendment[4] will strengthen the above Supreme Court Opinion. The amendment should read as follows:

"Qualification in hiring discrimination is a genuine issue and as such no hiring discrimination complaints must be dismissed by summary judgment, or qualifications must be precluded". One district court did, exh._8_.

At present defense counsels are bypassing the above Supreme Court Opinion. If this amendment is adopted, no defense counsel will be given a chance to bypass this amendment.[5] As a result more and more plaintiff's will win their cases. Therefore, this amendment is a question of national importance to the Supreme Court to decide if, indeed "Qualification is a genuine issue" in hiring discrimination. If Supreme Court finds so, then there will be a permanent solution of the problems for the ever increasing minorities in America.

4. Whether, for hiring discriminations, a further amend-

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[4] A further amendment to the amendment of the ADEA of 1967.

[5] because it will be a very strong amendment.

ment is feasible or needed to the existing 1993 Supreme Court Opinion shown below:

> There are two **methods** by which a plaintiff can attempt to prove potential discrimination. First, plaintiff may present **direct evidence** of employment discrimination. Second, the plaintiff can rely on the three stage order of proof and presumptions and satisfy his burden of proof using circumstantial evidence. *St. Mary's Honor Ctr. v. Hicks* 509 US 502, 506-12, 113 S. Ct. 2742 (1973).

The suggested amendment will read as follows:

"For discrimination in hiring, the direct method will be the direct application of SEC. 4. (a)(1) of ADEA of 1967, as amended. In such an amendment, no circumstantial evidence will be needed."[6] The direct method consists of determination of two issues.

(1) Whether plaintiff was better qualified.
(2) Whether plaintiff belongs to the protected group by virtue of his age.

The above amendment is actually a clarification of the terms, "methods" and "direct evidence". This clarification will eliminate the many different interpretations they may have. If the Hon. Supreme Court deliver such an opinion, the adjudication of complaints "for discrimination in hiring" will be much shorter and quicker resulting in judicial economy.

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[6] And there is no circumstantial evidence when the two allegations: (i) A less qualified person was hired and (ii) I was unlawfully discriminated because I belong to the protected group by virtue of my age. These two allegations are established from documentary evidence.

IX. QUESTIONS OF NATIONAL IMPORTANCE

1. The first and foremost question of national importance is that the courts lack necessary qualifications to evaluate the qualifications of the candidates. For this reason courts are incorrectly making erroneous decisions. This has been going on since the laws were enacted more than about 50 years ago. And millions of minorities have been denied of their rights in the mean time. This is so much of national importance that the President has created President's Inniative for One America.

2. If I were the only minority who was indisputably better qualified and belong to a protected group, then the matter would not demand so much national attention. But here all cases have been being dismissed and hundreds of thousands of minorities are deprived of their Civil Rights every year.

3. According to Rule 56(c) substantiated by the Supreme Court Opinion, a defendant shall be awarded a summary judgment in its favor if there is no genuine issue. Since qualification is a genuine issue the defendant could not be awarded the summary judgment as a matter of law. But it was. .

4. "Qualification" is a genuine issue not only in this case but also in all the cases filed since the enactment of the law in December, 1967.

5. Therefore, this is a question of national importance for the Supreme Court to decide if, indeed, "qualification" is a genuine issue. The Supreme Court decision will not only be important to me but also to all others similarly situated. But

in this case, it is of national importance, because (i) in every complaint qualification is an issue and (ii) it involves millions of minorities of the United States.

6. In addition, the Supreme Court must decide if, indeed, courts lack necessary qualifications. If it is so found, then the proposed amendments to the question No. 4 should be adopted. for the god of America.

7. According to Rule 56(c) substantiated by the Supreme Court Opinion, a defendant shall be awarded a summary judgment in its favor if there is no **genuine issue.** Since **qualification are a genuine issue** the defendant could not be awarded the summary judgment as a matter of law. But it was.

8. So, the courts have acted against the Rule 56(c) and the Supreme Court opinion on the Rule 56(c). The courts have also violated the law, ADEA of 1967, as amended.

9 "That courts do not possess necessary qualifications" is another question of national importance. If, indeed, "the courts do not possess necessary qualifications", they have been making incorrect decisions without knowing. This is true.

10. The judges possess qualifications in laws. So, they are qualified to handle cases in laws. But they do not possess qualifications in Engineering, Mathematics, Physics, etc. Therefore, they are not qualified to handle cases involving Engineering, Mathematics, Physics, etc. Then the question arises, "How are the judges going to handle cases involving Engineering, Mathematics, Physics, etc.? There are two answers.

11. The qualifications those, cannot be handled by judges, must be precluded, or the cases must be submitted to a jury trial. Therefore, the Supreme Court should accept the amendment proposed in the question No. 3. presented. If this amendment is not adopted by the Supreme Court millions more minorities will be losing their Civil Rights. This is the strongest argument in favor of national importance; and only one argument like this is needed for the Supreme Court to grant my writ of certiorari.

12. During 1994-1996, I filed thirteen hiring discrimination complaints. All of them have been dismissed by summary judgments. In all of them I was indisputably better qualified than the select.[7] Yet., I was not hired.

X. ANOTHER QUESTION OF NATIONAL IMPORTANCE

Another question of national importance is that this appellate court decision is in conflict with many other appellate courts' decisions. For examples:

Standard 1.

Summary judgment is appropriate only when there is no issue of material facts, so that the dispute may be decided solely on legal grounds. Holloway v. Lockhart, 813 F.2d 874 (8th Cir. 1987.

But in this case there are issues of material facts. Such facts are (i) the qualifications of the competing candidates and (ii) if plaintiff belongs to a protected group. So, summary judgment was not appropriate. Therefore, the D.C. circuit's decision is in conflict with the 8th circuit's decision.

Standard 2.

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[7] Of course, I belong to the protected group by virtue of my age.

Only disputes over facts that may affect outcome of the suit under the governing law will properly preclude the summary judgment. *Anderson*, 477 US at 248

Clearly, the dispute over the above fact will affect the outcome of the suit. Therefore, summary judgment in this case should have been properly precluded. **And, therefore, the D. Cir. decision is in conflict with the above decision.**

Standard 3.

The Eighth Circuit Court of Appeals has cautioned that summary judgment should be invoked carefully so that no person will be improperly deprived of a trial of disputed factual issues. Inland Oil & Transport Co. v. United States, 600 F.2d 725 (8th Cir, 1979), certi. denied, 444 U. S. 991 (1979)

My two issues that I was better qualified and I belong to a protected group are not disputed factual issues. They are indisputable factual issues. Therefore, summary judgment was improperly granted. **So, the D.C. circuit is in conflict with the 8th Cir.**

Standard 4.

In considering a summary judgment standard motion, the court is required to accept as true all evidence presented by the non-moving party, and to draw all justifiable inferences from such evidence in that party's favor. Id. at 255.

In a summary judgment motion the defendant is the moving party and the plaintiff is the non-moving party.

According to the above standard the court is required to accept as true all evidence[8] and draw all justifiable inferences

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[8] but not if they are not evidence

from such evidence. Using **this** summary judgment a plaintiff may win. If he/she does, the defendant still has a second chance at trial. If the defendant did not **really unlawfully** discriminate the plaintiff, defendant would have won at the second chance (the trial).

On the other hand if the plaintiff's evidence is not accepted as true he/she may lose, then he/she will never get a second chance. But according to the above summary judgment standard if the evidence of plaintiff is accepted as true, then he/she gets a second chance at trial[9] This standard removes the inherent inequality between the plaintiff and the defendant in protecting their rights during summary judgment adjudication.

Thus, this standard gives equal opportunities to both parties.

This interpretation is my innovation from creative thinking and I submit it to the Hon. Supreme Court. **Therefore, the D. C. Cir. decision is in conflict with the above decision'**

Standard 5.

The court must accept as true all of the allegations in the pleadings and must give the plaintiff the benefit of every favorable inference that can be drawn from those allegations. Schrob v. Catterson 948 F.2d 1402, 1405 (3d Cir. 1991);

Markowitz v. Northwest Land Co., 906 F.2d, 100, (3rd Cir 1990).

The district court did not accept my allegations as true. My allegations were (i) I was better qualified and (ii) I

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[9] this philosophy is in consistence with the Supreme Court opinion on Rule 56(c).

belong to the protected group by virtue of age. Had it not done so, it would submit the case to a jury trial. I would then have an equal opportunity to win. Thus, D.C. Cir. decision is in conflict with the third Cir decision. **Therefore, the D. Cir. decision is in conflict with the Supreme Court opinion on FRCP 56(6).**

Standard 6.

The burden is on the moving party is to show that the record does not disclose a genuine dispute on a material fact.

Counts v, M.K. Ferguson Co., 862 F.2d 1338 (8th Cir. 1988).

A material fact is a relevant fact. That I was better qualified is a relevant fact, because this enters in to the litigation. Defendant did not show that there was no dispute on this material fact. **Therefore, D.C. Cir. decision is in conflict with 8th Cir.**

Standard 7

Supreme Court Opinion on FRCP 56 (c) says,

> The plain language of Rule 56(c) mandates the entry of summary judgement, after adequate time for discovery and upon motion, against a party who fails to make sufficient showing to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof **at trial**. In such a situation, there can be 'no genuine issue as to any material fact'.

Defendant did not demonstrate that plaintiff failed "to make sufficient showing to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof **at trial**." **Therefore, the D. C. Cir. decision is in conflict with the Supreme Court**

opinion on FRCP 56(6). This is a serious conflict because all summary judgments are granted by Rule 56(c).

Standard 8.

In appraising the sufficiency of the complaint, we follow, of course, the accepted rule, that a complaint should not be dismissed for the failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts to support his claim that would entitle him to a relief.

Defendant did not show that "it appears beyond doubt that the plaintiff can prove no set of facts to support his claim that would entitle him to a relief." **Therefore, the D. C. Cir. decision is in conflict with the above decision'**

Standard 9.

A complaint is properly dismissed only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim [at trial] which will entitle him to relief. Ransom v. Marrazzo, 848 F.2d 398, 401 (3rd Cir. 1988).

Defendant did not show that "it appears certain that the plaintiff cannot prove any set of facts in support of his claim [at trial] which will entitle him to relief." **Therefore, D,C. Cir, decision is in conflict with the 3rd Cir. decision.**

I have shown above nine examples of cases where the D. C. Circuit decision is in conflict with other circuits' decisions. From these examples I **also** conclude that

THE SUMMARY JUDGMENT
WAS NOT APPROPRIATE

XI. ANSWER TO THE COURT OF APPEALS

According to the appellate court the case was dismissed by claim preclusion. This is not true. My present case bears the district court No. 99-cv-1197 and appellate court No. 99-5256. **Aziz vs. Slater.** Allegations are:

(i) Breach of contract, (ii) Obstruction of justice
(iii) Concealment of truth, (iv) Perjury and, iv) fraud.

My previous case bears the district court No. 96-cv-2715 and appellate court No. 99-5352. **Aziz vs. Slater.** Allegations are:

(i) A less qualified person was hired.
(ii) Plaintiff was discriminated.
(iii) Plaintiff was unlawfully discriminated because he belongs to the protected group by virtue of his age.

Doctrine of claim preclusion has four requirements. They are: (1) There was a final judgment on the merits, (2) the prior suit involved the same parties or their privies and (3) the prior suit was based upon the same cause of action. See Stanton v. District of Columbia Circuit of Appeals. 127 F. 3d. 72, 78 (D.C. Cir. 1997). (4) In addition, litigants must have had an opportunity to raise the claim in the earlier proceeding. See North v. Walsh, 881 F.2d 1088, 1095 (D.C. Cir.1089), Clark-Cowlitz Joint Operating Agency v. FERC, 826 F.2d 1974, 1079 (D.C. Cir. 87).

Though the occurrence is the same, it is clear that causes of actions are different. **So, they are not same and, hence, not barred by doctrine of claim preclusion.**

Plaintiff gradually discovered the causes as they occurred. For examples;

the first causes:

(i) A less qualified person was hired.
(ii) Plaintiff was discriminated.
(iii) Plaintiff was unlawfully discriminated because he belongs to the protected group by virtue of his age. These facts were discovered when the employer produced the exh._8_.

The second causes, obstruction of justice, concealment of truth and perjury was discovered when defendant produced the exhs. 4, 5, 6, 7 & 8.. For these reasons plaintiff did not have the opportunity to bring these allegations before.

There was a final judgment on the merits. The final judgment was only on the merits of the first complaint and not on the merits of the second complaint.

A judgment is not subject to collateral attack. Plaintiff in this tortious action is not collaterally attacking the prior judgment. Instead, plaintiff is seeking redress of tortious conduct committed by defendant against plaintiff.

XII. ANSWER TO THE DISTRICT COURT ORDER

1. In its memorandum of opinion, exh._13a_, dated 6/30/97, page 2, line 9, the court says, "Even assuming that plaintiff has shown that he was qualified for the position he sought," In the last line of the same page, the court says, "It may well be that plaintiff is qualified for such a teaching job,"

2. The law requires the court to determine, who of the two, plaintiff or selectee, was better qualified Instead, the court made assumptions.

3. If the court used the governing law, it could not make these assumptions because the law has left no room for making assumptions. It has definitely specified that to find discrimination the court must determine whether or not

plaintiff was better qualified and belongs to a protected group. But the court did not do so.

Therefore, the summary judgment was not appropriate.

4. The court did not do so because, as mentioned earlier, a court does not possess necessary qualifications to evaluate the qualifications of the candidates. Certainly, no courts will be able to evaluate the exhs.3. 4. 5. 6. 7 & 8.. What must the courts do then? Courts have two alternatives. (a) Submit the case to a jury trial or preclude the qualifications for which they are not qualified. One court did, exh._8_.

5. If the court understood that qualifications were a genuine issue it could not dismiss the case by a summary judgment motion brought by the defendant.

XIII. CONCLUSIONS

Conclusions are:

1. Summary judgment standards were designed for the trial courts to decide which cases must be submitted to trial. Rule 56(c), the Supreme Court Opinion on Rule 56(c) and nine standards cited are such standards. Unfurtunately, neither the defendant nor the district court has used any one of these standards. Therefore, the district court has dismissed my case by a summary judgement without summar judgment standrds which cannot be done.....

2. If proposed amendments are adopted existing loopholes and weaknesses will be eliminated and both minorities and majorities will be equally benefited.

3. The most important conclusions are that (i) if there is a geneine issue, a summary judgment cannt be granted. (ii) if courts do not possses nececesary qualifica-

tions, summary judgments cannot be granted by those courts. So, my case must not have been dismissed.

4. In this writ of certiriori there are proposed amendmends which will off set the courts' lack of qualifications and do justice to all.

XIV. REMARKS

1 If I was indisputably better qualified how can the employer offer the position to the selectee? If I indisputably belong to the protected group by virtue of age, did not the employer discriminate me against in violation of ADEA of 1967 ?

2. It is not the job of the Supreme Court to evaluate the qualifications of the candidates. On the other hand, the lower courts do not possess necessary qualifications. So, only a jury can can evaluate the qualifications of the candidates with the help of evidence and witnesses.

XV. PRAYERS

WHEREFORE, for all the foregoing reasons this humble petitioner prays that this Honorable Supreme Court of the United States of America grant petitioner's writ of certiorari adopting the proposed amendments.

Respectfully submitted,

3-15-00 301-528-0241

Abdul Aziz, Ph.D., Petitioner Pro se, 19924 Lake Park Drive, Gemantown, MD 20874-1084

APPENDIX OF EXHIBITS

Nos.	Titles	Pages
1.	Appellate Court Decision	1a
2.	District Court Mmorandum Opinion	3a
3.	Advertisement of the position	6a
4.	Master spreadshet	7a
5.	Spreadsheet of plaintiff	8a
6.	Spreadsheet of selectee	9a
7.	Comparison of qualifications	10a

EXHIBIT 1

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 99-5256 **September Term, 1999**
99cv01197

FILED DEC 29 1999

MANDATE
2-11-00
Sd/- E. Brown

Abdul Aziz,
Appellant,

v.

Rodney E. Slater, Secretary of Transportation,
Appellee.

A True copy :
United States of District Court of Appeals
for the District Circuit of Columbia Circuit
By: Sd/- E. Brown Deputy Clerk

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Edward's, Chief judge. Gins burg and Cental, Circuit Judges.

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the brief filed by appellant. The court has deter- mined that the issues presented occasion no need for an opinion. See D.C. Cir. Rule 36(b). It is

ORDERED AND ADJUDGED that the district court's order filed May 20, 1999 be affirmed. Appellant has filed three cases, all of which are nearly identical. Accordingly the district court properly dismissed this case, *sua sponte,* as barred on the ground of claim preclusion. See Studio Art Theatre v. City of Evansville, 76 F.3d 128 (7th Cir.)(citation omitted), cert denied, 519 U.S. 866 (1996); see also Gullio v. Veterans Coop. Hous. Ass'n, 269 F.2d 517 (D.C. Cir. 1959) (pr curiam)(district court may take judicial notice of prior proceeding and apply *res judicata).*

The clerk is directed to withhold issuance of the mandate herein until seven after disposition of any timely petition for rehearing or petition for rehearing en banc . See Fed. R.App. P. 41(b); D.C. Cir. Rule 41.

Per Curium

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 99-1197

F I L E D
May 20, 1999

ABDUL AZIZ,
Plaintiff,

v.

Rodney E. Slater, Secretary
Department of Transportation
Defendant.

MEMORANDUM OPINION

The case is before the Court on Plaintiff's complaint. Upon consideration of the complaint the Court wil dismiss it *sua sponte* because plaintiff already has brought two cases arising from the same occurrence , one of which raised the exact same causes of action as are raised in this complaint. This case is therefore barred by the doctrine of clam preclusion.

Plaintiff filed a pro se action in this court against the Secretary of the Department of Transportation alleging age discrimination stemming from the Department's failure to hire him. See Aziz v. Slater. Civil Action No. 96-2716. On June 30. 1997, the court grated defendants motion for summary judgment and entered judgment for defendant for plaintiff had not provided any evidence of age discrimination See Aziz v. Slater, Civil Action No. 96-2716, Mem. Opinion of June 30, 1997 at 3 (D.D.C.). Plaintiff appealed. and by order of October 2, 1997, the court f appeals affirmed the

judgment of this court. See Aziz v. Slater. No. 97-5169, Order of October 29, 1997. (D. D. Cir.). On June 27, 1998, plaintiff filed a motion for relief from judgment pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure which this court denied. See Aziz v. Slater, Civil Action No.962716 Order of Sept. 16, 1998 at 2 (D. D. C.).

On September 21, 1998, plaintiff filed a new complaint alleging that the Secretary of Department of Transportation had engaged in fraud and conspiracy when it failed to hire him. See Aziz v. Slater, Civil Action No. 98-2258. Mem. Opinion of November 18, 1998 at 2 (D. D. C.). Plaintiff also states that the defendant also committed conspiracy "because many evaluators work together, with [a] tacit understanding [of] what to do." Id. On November 18, 1998, the Court found that plaintiff's claims were barred by the doctrine of claim preclusion because those claims "stem[med] the same underlying even or occurrence as the claims in his first employment discrimination action and plaintiff had the "opportunity to raise the issues of fraud and conspiracy in the first action." Id. at 4. The court therefore *sua sponte* dismissed plaintiff's complaint.

On March 24, 1999, plaintiff filed this third action against the Secretary of the Department of Transportation in the Superior Court of Columbia. The government removed the action to this court. The complaint in this case alleges fraud and conspiracy and mirrors the complaint in plaintiff's second case, Aziz v. Slater, Civil Action No. 98-2258. Plaintiff therefore is doubly precluded from pursuing the claims in this action: first, litigation of these claims is precluded because they should have been raised as pat of part of the original action, Aziz v. Slater, Civil Action No. 96-2716. and second litigation is precluded because the court already has dismissed the exact claims. See Aziz v. Slater, Civil Action No. 98-225

In the interest of justice and preserve judicial time and resources, the court therefore will dismiss the complaint in this case *sua sponte*. See Studio Art Theatre v City of Evansville, 76 F.3d 128, 130 (7th Cir.)(trial court may dismiss complaint *sua sponte* on the ground of claim preclusion, *cert. denied,* 519 U.S. 866 (1996); Salahuddin v. Jones, 992 F.2d 447, 449(2nd Cir.)(same), cert. denied, 510 U.S. 902)1993); Gullo v. Veterans Coop Housing Ass'n, 269 F.2d 517 (D. C. Cir. 1959)(same). An order and judgment consistent with this memorandum Opinion shall be issued this same day.

SO ORDERED

SD/- Paul L. Friedman

PAUL L. FRIEDMAN
United States District Judge

DATE: 5/20/99

Advertisement of the position published in the Chronicle of higher education

Mechanical Engineering: Temporary Faculty position. The U.S. Coast Guard Academy invites applications for a full-time temporary teaching position in Mechanical Engineering for the Fall 1996 and Spring 1997 semesters. The successful candidate will teach undergraduate Mechanical Engineering courses in both the thermal sciences and mechanical systems areas as well as supervise student projects. Applicants must possess a Master's degree in Mechanical Engineering or a related field. A Ph.D. degree, college-level teaching and engineering experience in industry are preferred. A demonstrated commitment to excellence and innovation in undergraduate teaching is desired. Salary will be commensurate with qualifications. Some citizenship restrictions may apply. Submit vita and names, addresses, and telephone numbers of three references to: U.S. Coast Guard Academy (pc), Civilian Personnel Office (23-95), 15 Mohegan Avenue, New London, Connecticut 06320-4195. Applications must be postmarked by 15 March 1996. Applications may also be faxed to 860-444-8288. Women and minority candidates are encouraged to apply. The U.S. Coast Guard is an Equal Opportunity, Affirmative Action Employer. For additional general information on civilian faculty positions and Civil Service opportunities at the U.S. Coast Guard Academy, contact

EXHIBIT 4

MASTER

Spreadsheet for ME Temporary Position Candidate Evaluation

Name:

								Fill In	
Degrees (Add 1 for BSME)	Ph.D in ME w/ MS in ME	Ph.D(related) w/MS in ME	MS in ME +Ph.D pursuit	MS in ME	MS (related)	Weighting Factor	Norm. Factor	Score (1-10)	Weighted Score
	10	8	7	6	4	10	0.139		0.00
Professional Registration	ME	Other Engr.							
	10	5				2	0.028		0.00
Industry Experience	Significant Related	Significant	Some						
	10	7	5			4	0.056		0.00
Prior Teaching Exp.	>3 yr.	3 yr.	2 yr	1 yr					
	10	9	8	6		6	0.083		0.00
Courses Taught	ME-Energy & Mechanics & Lab.	ME Mechanics	ME Energy	Non-ME but related					
	10	9	8	5		8	0.111		0.00
Project Supervision	Sup. Student Projs.	Manage Projs.	Group Proj. Ldr.	Group Member					
	10	8	5	3		4	0.056		0.00
Prof. Exp. in Leadrshp/Tchng Prog/Crs Devel Inst, Innovation	Significant-High Quality Effort	Some Notable Activities	Some Activities						
	10	8	6			8	0.111		0.00

Potential for Future Contrib.	Significant 10	Probable 8	Possible 6	5	0.069		0.00
Awards and Honors	Significant and Notable 10	Some Notable 8	Some 6	3	0.042		0.00
Papers Published	Recent - referced in discipline & pedagogy 10	Recent presentations and papers 7	Some publications 5	5	0.069		0.00
Prof. Society Activity	Active on National and Local Level 10	Some Activity 7	Member 4	3	0.042		0.00
Institutional Service	Significant 10	Some notable 8	Some 5	3	0.042		0.00
Extracurricular Activity	Significant Resp. - well preformed 10	Some Notable Activities 8	Some Activities 6	3	0.042		0.00
Other Info.	Significant 10	Notable 7	Positive 5	8	0.111		0.00
				Sum: 72	1.000		0.000

Attachment E

AZIZ'S SPREADSHEET

Spreadsheet for ME Temporary Position Candidate Evaluation

Name: Walters, the selectee

								Fill in		
1	Degrees (Add 1 for BSME)	Ph.D in ME w/ MS in ME 10	Ph.D(related) w/MS in ME 8	MS in ME +Ph.D pursuit 7	MS in ME 6	MS (related) 4	Weighting Factor 10	Norm. Factor 0.139	Score (1-10) 9	Weighted Score
2	Professional Registration	ME 10	Other Engr. 5				2	0.028	0	
3	Industry Experience	Significant Related 10	Significant 7	Some 5			4	0.056	10	
4	Prior Teaching Exp.	>3 yr. 10	3 yr. 9	2 yr 8	1 yr 6		6	0.083	10	
5	Courses Taught	ME-Energy & Mechanics & Lab. 10	ME Mechanics 9	ME Energy 8	Non-ME but related 5		8	0.111	10	
6	Project Supervision	Sup. Student Projs. 10	Manage Projs. 8	Group Proj. Ld. 5	Group Member 3		4	0.056	7	
	Prof. Exp. in Leadrshp/Tchng Prog/Cre Devel Inst. Innovation	Significant-High Quality Effort 10	Some Notable Activities 8	Some Activities 6			8	0.111	8	

9	Potential for Future Contrib.	Significant 10	Probable 8	Possible 6	8	0.069	9	
9	Awards and Honors	Significant and Notable 10	Some Notable 8	Some 6	3	0.042	8	
10	Papers Published	Recent - refereed in discipline & pedagogy 10	Recent presentations and papers 7	Some publications 5	5	0.069	5	
11	Prof. Society Activity	Active on National and Local Level 10	Some Activity 7	Member 4	3	0.042	3	
12	Institutional Service	Significant 10	Some notable 8	Some 5	3	0.042	10	
13	Extracurricular Activity	Significant Resp. - well preformed 10	Some Notable Activities 8	Some Activities 6	3	0.042	10	
14	Other info.	Significant 10	Notable 7	Positive 5	8	0.111	10	
					Sum: 72	1.000		8.40

wrote ABET doc

community service activities

FAM

NUWC

Navy

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WALTER'S SPREADSHEET

Spreadsheet for ME Temporary Position Candidate Evaluation

Name: Walters, the selectee

								Fill in		
1	Degrees (Add 1 for BSME)	Ph.D in ME w/ MS in ME 10	Ph.D(related) w/MS in ME 8	MS in ME +Ph.D pursuit 7	MS in ME 6	MS (related) 4	Weighting Factor 10	Norm. Factor 0.139	Score (1-10) 9	Weighted Score
2	Professional Registration	ME 10	Other Engr. 6				2	0.028	10	
3	Industry Experience	Significant Related 10	Significant 7	Some 5			4	0.056	10	
4	Prior Teaching Exp.	>3 yr. 10	3 yr. 9	2 yr 8	1 yr 6		6	0.083	10	
5	Courses Taught	ME-Energy & Mechanics & Lab. 10	ME Mechanics 9	ME Energy 8	Non-ME but related 5		8	0.111	10	
6	Project Supervision	Sup. Student Projs. 10	Manage Projs. 8	Group Proj. La.. 5	Group Member 3		4	0.056	7	
	Prof. Exp. in Leadrshp/Tchng Prog/Cre Devel Inst. Innovation	Significant-High Quality Effort 10	Some Notable Activities 8	Some Activities 6			8	0.111	8	

9	Potential for Future Contrib.	Significant 10	Probable 8	Possible 6	6	0.069	9
9	Awards and Honors	Significant and Notable 10	Some Notable 8	Some 6	3	0.042	8
10	Papers Published	Recent - refereed in discipline & pedagogy 10	Recent presentations and papers 7	Some publications 5	5	0.069	5
11	Prof. Society Activity	Active on National and Local Level 10	Some Activity 7	Member 4	3	0.042	3
12	Institutional Service	Significant 10	Some notable 8	Some 5	3	0.042	10
13	Extracurricular Activity	Significant Resp. - well preformed 10	Some Notable Activities 8	Some Activities 6	3	0.042	10
14	Other info.	Significant 10	Notable 7	Positive 5	8	0.111	10
					Sum: 72	1.000	8.40

wrote ABET Lec

multiply activities

TAM

NUWC

Navy

X

COMPARISON OF QUALIFICATIONS

No. 1. Required qualification is an M.S. degree in Mechanical Engineering: I have a Ph.D., M.S. and B.S in Mechanical Engineering. The selectee has an M.S. in Mechanical Engineering. So, in this qualification, I am better qualified.

No. 2. Preferred qualifications are a Ph.D., college level teaching and engineering industrial experience. I have a Ph.D., 6 years of college level teaching and more than 20 years of engineering industrial experience. The selectee has no Ph.D., no college level teaching experience and less than 4 years of US Navy administrative experience in submarines. So, in this qualification I am also better qualified.

COMPARISON OF QUALIFICATIONS

No. 1. Required qualification is an M.S. degree in Mechanical Engineering: I have a Ph.D., M.S. and B.S in Mechanical Engineering. The selectee has an M.S. in Mechanical Engineering. So, in this qualification, I am better qualified.

No. 2. Preferred qualifications are a Ph.D., college level teaching and engineering industrial experience. I have a Ph.D., 6 years of college level teaching and more than 20 years of engineering industrial experience. The selectee has no Ph.D., no college level teaching experience and less than 4 years of US Navy administrative experience in submarines. So, in this qualification I am also better qualified.